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*Enel Green Power North America, Inc.*

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**In re:**

**PG&E CORPORATION**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

Bankruptcy Case  
No. 19 - 30088 (DM)  
Chapter 11  
(Lead Case)  
(Jointly Administered)

**ENEL GREEN POWER NORTH  
AMERICA'S MOTION UNDER 11  
U.S.C. §§ 105(a) AND 107(b) AND FRBP  
9018 FOR ENTRY OF AN ORDER  
AUTHORIZING THE FILING OF  
CERTAIN CONTRACTS AND  
RELATED FILINGS UNDER SEAL**

- ☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric  
Company  
☐ Affects both Debtors

Hearing Date: March 12, 2019  
Time: 9:30 a.m.  
Courtroom: Hon. Dennis Montali  
Objections Due: March 5, 2019, 4 p.m.

*\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

Enel Green Power North America, Inc. ("Enel") hereby moves (this "Motion"), pursuant to Sections 105(a) and 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 1001-2(a) of

1 the Bankruptcy Local Rules for the United States District Court for the Northern District of  
2 California (the “Bankruptcy Local Rules”), and the *New District Wide Procedures for*  
3 *Electronically Filing Sealed and Redacted Documents* adopted by the United States Bankruptcy  
4 Court for the Northern District of California (the “Local Procedures”), for entry of an order (i)  
5 authorizing Enel to file under seal the CSAs (*as defined below*) and the Interconnection  
6 Agreements (*as defined below*) related to Enel’s *Motion for Entry of an Order Confirming Safe*  
7 *Harbor Protection Under 11 U.S.C. §§ 362(b)(6) and 556* (the “Safe Harbor Motion”),<sup>1</sup> filed  
8 contemporaneously herewith, as well as certain portions of the Safe Harbor Motion and the  
9 Bertolino Declaration (the “Motion Papers”) that refer to confidential details contained in the  
10 CSAs and Interconnection Agreements, and (ii) directing that the CSAs, Interconnection  
11 Agreements, and unredacted copies of the Motion Papers will remain under seal and confidential  
12 and not be made available to anyone without the consent of Enel and the other parties to the  
13 CSAs and Interconnection Agreements, or further order from the Court.

14 A proposed form of order is attached hereto as Exhibit A, in accordance with the Local  
15 Procedures (the “Proposed Order”).

16 The Motion is based on this Memorandum of Points and Authorities, the concurrently  
17 filed Safe Harbor Motion, the concurrently filed Bertolino Declaration, the complete files and  
18 records of the referenced matters, the arguments of counsel, and such other and further matters as  
19 this Court may consider at or before any hearing on this Motion.

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28 <sup>1</sup> Capitalized terms used but not defined in this Motion shall have the meaning used in the Safe Harbor Motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Enel Green Power North America, Inc. (“Enel”), through its subsidiaries, is party to three  
4 Capacity Storage Agreements (the “CSAs”) with Pacific Gas and Electric Company (“PG&E,”  
5 and together with PG&E Corporation, the “Debtors”). Enel has filed a *Motion for Entry of an*  
6 *Order Confirming Safe Harbor Protection Under 11 U.S.C. §§ 362(b)(6) and 556* (the “Safe  
7 Harbor Motion”) seeking an order determining that Enel’s exercise of its contractual rights under  
8 the CSAs is protected by the safe harbor provision of Sections 362(b)(6) and 556 of the  
9 Bankruptcy Code, as well as a declaration in support thereof (the “Bertolino Declaration,” and  
10 together with the Safe Harbor Motion, the “Motion Papers”). Both Enel and PG&E have agreed  
11 to stringent confidentiality clauses in the CSAs, and Enel respectfully requests that the Court  
12 allow Enel to submit the CSAs and Interconnection Agreements, as well as unredacted versions  
13 of the Motion Papers that reference confidential details in the CSAs and Interconnection  
14 Agreements, under seal so that the matter of safe harbor protection can be adequately adjudicated  
15 without violating the confidence of PG&E and Enel regarding the terms of their agreements.

16 **II. JURISDICTION**

17 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, the  
18 *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24  
19 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28  
20 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the  
21 relief requested in the Motion are §§ 105(a) and 107(b) of the Bankruptcy Code and Bankruptcy  
22 Rule 9018.

23 **III. FACTS**

24 Enel, through its subsidiaries,<sup>2</sup> is party to three CSAs with PG&E, each dated November  
25 8, 2017, with terms ranging from 10 to 20 years. Each CSA encompasses two phases: (i) the  
26 development of an energy storage facility (each a “Facility,” and together the “Facilities”) and (ii)

27 \_\_\_\_\_  
28 <sup>2</sup> The subsidiary companies that are party to the Capacity Storage Agreements with PG&E are Cascade Energy  
Storage, LLC, Kingston Energy Storage, LLC, and Sierra Energy Storage, LLC.

1 providing resource adequacy capacity to PG&E from each Facility, to enable PG&E, *inter alia*, to  
2 meet its resource adequacy and renewable energy requirements prescribed by the California  
3 Public Utilities Commission (“CPUC”).

4 In reliance on the CSAs, Enel’s same subsidiaries have entered into two interconnection  
5 agreements, executed December 3 and 4, 2018, with a third interconnection agreement expected  
6 to be executed in December 2020 (the “Interconnection Agreements,” and together with the  
7 CSAs, the “Contracts”). The Interconnection Agreements allow Enel to interconnect the relevant  
8 Facility to PG&E’s transmission system, and guarantee the ability of Enel to deliver the Facility’s  
9 output.

10 Additional information regarding Enel’s business and commercial agreements with PG&E  
11 is set forth in the Safe Harbor Motion and the Bertolino Declaration.

12 Each CSA contains a provision stating that throughout the term of the agreement, “neither  
13 party shall disclose the non-public terms or conditions of this Agreement or the Parties’ bidding  
14 or negotiation process ... to a third-party.”<sup>3</sup>

15 When PG&E filed the application for approval of the CSAs with the CPUC (Application  
16 17-12-003), PG&E claimed the CSAs were confidential in their entirety, and the CSAs were filed  
17 under seal.

18 As each of the Contracts contains sensitive and confidential commercial information, Enel  
19 respectfully requests that the Court permit Enel to file the CSAs and the Interconnection  
20 Agreements under seal, and the Motion Papers in redacted form, to ensure that the Contracts are  
21 not publicly disclosed in violation of their confidentiality provisions.

#### 22 **IV. BASIS FOR RELIEF REQUESTED**

23 Under Section 105(a) of the Bankruptcy Code, the Court is allowed to “issue any order ...  
24 that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).  
25 Section 107(b) provides that, “[o]n request of a party in interest, the bankruptcy court shall, and  
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27 <sup>3</sup> See, i.e., Capacity Storage Agreement Resource Adequacy Only between Pacific Gas and Electric Company (as  
28 Buyer) and Cascade Energy Storage, LLC (as Seller), executed November 8, 2017, Article 19.1 Confidential Information.

1 on the bankruptcy court's own motion, the bankruptcy court may ... [p]rotect any entity with  
2 respect to a trade secret or confidential research, development, or commercial information." 11  
3 U.S.C. § 107(b).

4 An entity seeking protection under Section 107(b) need only show that the information it  
5 seeks to seal is "confidential" and "commercial" in nature. *Video Software Dealers Ass'n v. Orion*  
6 *Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). Commercial information has been defined as  
7 information that would produce "an unfair advantage to competitors by providing them with  
8 information as to the commercial operations" of the entity seeking protection. *In re Intel Corp.*, 17  
9 B.R. 942, 944 (9th Cir. B.A.P. 1982). Commercial information does not need to be a trade secret  
10 to fall under Section 107(b)'s protection. *See Orion Pictures Corp.*, 21 F.3d at 28 (finding that §  
11 107(b) was carefully drafted to avoid merging "trade secrets" with "confidential commercial  
12 information").

13 Under the Bankruptcy Rules, the Court is similarly authorized to "make any order which  
14 justice requires ... to protect the estate or any entity in respect of a trade secret or other  
15 confidential research, development, or commercial information." Fed. R. Bankr. P. 9018.  
16 Similarly, the Local Procedures require that a request to file under seal be narrowly tailored to  
17 sealable materials. *New District Wide Procedures for Electronically Filing Sealed and Redacted*  
18 *Documents*.

19 Because the Contracts contain confidential commercial information within the scope of  
20 Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, the Court should grant Enel's  
21 request.

22 The Contracts are the product of extensive good faith negotiations between PG&E and  
23 Enel, following a competitive bidding process, and public disclosure of the Contracts would cause  
24 substantial harm to both parties and create an unfair advantage for potential competitors seeking  
25 to enter into similar agreements. The Contracts contain highly sensitive commercial information  
26 and are subject to robust confidentiality provisions negotiated and agreed between PG&E and  
27 Enel. Disclosure of this information would put the parties at a competitive disadvantage by  
28 constraining their ability to negotiate capacity storage agreements in future transactions. Further,

1 compelling public disclosure of the Contracts or their terms in the Motion Papers could have a  
2 chilling effect that discourages other potential transaction counterparties from entering into  
3 similar agreements with the parties in the future.

#### 4 **V. NOTICE**

5 Notice of the Motion to File Under Seal will be provided to (i) the Debtors and counsel to  
6 the Debtors; (ii) counsel to the Office of the United States Trustee for Region 17; (iii) counsel to  
7 the administrative agent under the Debtors' debtor-in-possession financing facility; (iv) counsel to  
8 the collateral agent under the Debtors' debtor-in-possession financing facility; (v) counsel to the  
9 CPUC; (vi) the U.S. Nuclear Regulatory Commission; (vii) the U.S. Department of Justice, as  
10 counsel for the United States on behalf of the Federal Energy Regulatory Commission; (viii) each  
11 member of the Official Committee of Unsecured Creditors specified in the Notice of  
12 Appointment of the Official Committee of Unsecured Creditors [Docket 409]; (ix) each member  
13 of the Official Committee of Tort Claimants specified in the Notice of Appointment of the  
14 Official Committee of Tort Claimants [Docket 453]; and (x) those parties who have requested  
15 notice pursuant to Fed. R. Bankr. P. 2002. Enel respectfully submits that no further notice is  
16 required.

#### 17 **VI. CONCLUSION**

18 For the reasons stated in this Memorandum of Points and Authorities, Enel respectfully  
19 requests that the Court enter an order (i) granting this Motion; (ii) authorizing Enel to file the  
20 Contracts and unredacted versions of the Motion Papers under seal; and (iii) granting such other  
21 and further relief as is just and proper.

1 Dated: February 19, 2019

STOEL RIVES LLP

2  
3 /s/ Gabrielle Glemann

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4 Attorneys for Party in Interest

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**EXHIBIT A**  
**Proposed Order**

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Bankruptcy Case  
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**[PROPOSED] ORDER PURSUANT TO 11  
U.S.C. §§ 105(a) AND 107(b) AND FRBP  
9018 AUTHORIZING ENEL GREEN  
POWER NORTH AMERICA TO FILE  
CERTAIN CONTRACTS AND RELATED  
FILINGS UNDER SEAL**

- ☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric  
Company  
☐ Affects both Debtors

*\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

Hearing Date: March 12, 2019  
Time: 9:30 a.m.  
Courtroom: Hon. Dennis Montali  
Objections Due: March 5, 2019, 4 p.m.

Upon the Motion, dated February 19, 2019 (the "Motion to File Under Seal"), of Enel  
Green Power North America, Inc. ("Enel"), pursuant to Sections 105(a) and 107(b) of the

1 Bankruptcy Code<sup>1</sup> and Rule 2018 of the Bankruptcy Rules for authority to file the Contracts and  
2 unredacted versions of the Motion Papers under seal, all as more fully set forth in the Motion to  
3 File Under Seal [Dkt. \_\_\_]; and this Court having jurisdiction to consider the Motion to File Under  
4 Seal and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring*  
5 *Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.) and  
6 Bankruptcy Local Rule 5011-1(a); and consideration of the Motion to File Under Seal and the  
7 requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper  
8 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and  
9 determined that notice of the Motion to File Under Seal as provided to the parties listed therein is  
10 reasonable and sufficient under the circumstances, and it appearing that no other or further notice  
11 need be provided; and this Court having reviewed the Motion to File Under Seal and the  
12 Bertolino Declaration; and this Court having determined that the legal and factual bases set forth  
13 in the Motion to File Under Seal establish just cause for the relief granted herein; and it appearing  
14 that the relief requested in the Motion to File Under Seal is in the best interests of Enel, the  
15 Debtors, their estates, creditors, shareholders, and all parties in interest; and upon all of the  
16 proceedings had before this Court and after due deliberation and sufficient cause appearing  
17 therefor,

18 **IT IS HEREBY ORDERED THAT:**

- 19 1. The Motion to File Under Seal is granted as provided herein.
- 20 2. Enel is authorized to file the Contracts and unredacted copies of the Motion Papers  
21 under seal pursuant to Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.
- 22 3. The Contracts and the unredacted Motion Papers are confidential, shall remain  
23 under seal, and shall not be made available to anyone without the consent of Enel and the  
24 parties thereto, except that copies shall be provided to the Court on a strictly confidential  
25 basis.
- 26 4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order

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28 <sup>1</sup> Capitalized terms used but not otherwise herein defined shall have the meanings ascribed to such terms in the Motion to File Under Seal.

1 shall be immediately effective and enforceable upon its entry.

2 5. Enel is authorized to take all steps necessary or appropriate to carry out this Order.

3 6. This Court shall retain jurisdiction to hear and determine all matters arising from  
4 or related to the implementation, interpretation, or enforcement of this Order.

5 **\*\*END OF ORDER\*\***